Apple Compute	r Inc. v. Podfitness, Inc.	D <sub>oc.</sub>
1	D. HART	V VV V CC
	David J. Miclean (#115098/miclean@fr.com)	James M. Wagstaffe Kerr & Wagstaffe LLP
2	FISH & RICHARDSON P.C. 500 Arguello Street, Suite 500	100 Spear Street, Suite 1800 San Francisco, CA 94105-1528
3	Redwood City, California 94063 Telephone: (650) 839-5070	Telephone: (415) 371-8500 Facsimile: (415) 371-0500
4	Facsimile: (650) 839-5071	James E. Magleby
5	Lisa M. Martens	Jason A. McNeill
6	(#195824/martens@fr.com) Andrew M. Abrams	Magleby & Greenwood, P.C. 170 South Main Street, Suite 350
7	(#229698/abrams@fr.com) FISH & RICHARDSON P.C.	Salt Lake City, UT 84101-3606 Telephone: (801) 359-9000
8	12390 El Camino Real San Diego, California 92130	Facsimile: (801) 359-9011
9	Telephone: (858) 678-5070 Facsimile: (858) 678-5099	Attorneys for Defendants and Counterclaim Plaintiff
10	Attorneys for Plaintiff and	Podfitness, Inc.
11	Counterclaim Defendant APPLE INC.	
12	AFFEE INC.	
13	UNITED STATES DISTRICT COURT	
14	NORTHERN DISTRICT OF CALIFORNIA	
	(OAKLAND DIVISION)	
15		
16	APPLE INC.,	Case No. C 06-5805 SBA
17	Plaintiff,	DECLARATION OF JAMES E. MAGLEBY IN SUPPORT OF
18	v.	STIPULATED REQUEST FOR ORDER CHANGING TIME
19	PODFITNESS, INC., and DOES 1-100, inclusive,	Honorable Saundra B. Armstrong
20	metasive,	Honorable Saundra B. Armstrong
21	Defendants.	
22	DODELET IECG DIG	
23	PODFITNESS, INC.,	
24	Counterclaim Plaintiff	
25	v.	
26	APPLE INC.,	
27	Counterclaim Defendant	
28		J
	1	DECLARATION OF JAMES E. MAGLEBY IN SUPPORT OF STIPULATED REQUEST FOR ORDER CHANGING TIME  Dockets.Justia.c

I, James E. Magleby, declare as follows:

- 1. I am a partner of Magleby & Greenwood, P.C., counsel of record in this action for Podfitness, Inc. ("Podfitness"). I am a member of the Bar of the State of Utah and will be admitted to this Court pending approval of my *pro hac vice* application. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.
- 2. My review of the file indicates that on August 1, 2007, Apple filed an amended complaint adding causes of action for cybersquatting and for breach of contract.
- 3. My review of the file indicates that Podfitness answered the amended complaint on August 31, 2007, and counterclaimed, alleging intentional and negligent interference with contractual relations, negligent interference with prospective economic advantage, and unlawful, unfair and deceptive practices in violation of the California Business and Professions Code. Podfitness' counterclaims arose from conduct which Podfitness alleges occurred during the discovery process, and after the scheduling order had been put into place.
- 4. My review of the file also indicates that on September 19, 2007, Podfitness' outside counsel, Workman Nydegger, filed its motion to withdraw as counsel. Subsequently, on October 16, 2007, in-house counsel for Podfitness, Steve Hutchinson, filed notice with the Court that he was no longer employed with Podfitness. On October 31, 2007, the Court permitted a withdrawal of outside counsel and ordered a temporary stay of the case for thirty (30) days pending Podfitness' engagement of substitute counsel.
- 5. Podfitness retained my firm, Magleby & Greenwood, P.C. as new outside counsel on or about November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP on December 6, 2007.
- 6. I have been informed that during the months of August, September, October and November 2007, the parties participated in numerous settlement negotiations. Ultimately, the parties did not succeed in reaching a settlement.

1	7. There have been no prior modifications to the schedule set forth in the Court's
2	January 25, 2007 Order. The requested time modification would re-set the entire schedule for
3	this case, and the parties would be prepared to try the case on December 1, 2008.
4	I declare under penalty of perjury under the laws of the United States of America
5	that the foregoing is true and correct.
6	Executed this 7th day of January, 2008, at Salt Lake City, Utah.
7	
8	/s/ James E. Magleby James E. Magleby
9	
10	10796621.doc
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

## PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 7, 2008, I caused a copy of the following document(s):

1

2

3

4

5

6

7

8

## DECLARATION OF JAMES E. MAGLEBY IN SUPPORT OF STIPULATED REQUEST FOR ORDER CHANGING TIME

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

10	James M. Wasstaffe	A			
1.1	James M. Wagstaffe Kerr & Wagstaffe LLP	Attorneys For Defendant			
11	100 Spear Street, Suite 1800	PODFITNESS, INC.			
12	San Francisco, CA 94105-1528				
	Telephone: (415) 371-8500	)			
13	Facsimile: (415) 371-0500	,			
1.4	(12) 2 / 1 02 00				
14	James E. Magleby	Attorneys For Defendant			
15	Jason A. McNeill	PODFITNESS, INC.			
	Magleby & Greenwood, P.O.	Ž.			
16	170 South Main Street, Suite 350				
17	Salt Lake City, UT 84101-3606				
1/	Telephone: (801) 359-9000				
18	Facsimile: (801) 359-9011				
10	MAIL:	Such correspondence was democited as at a Cally will			
19	X MAIL:	Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in			
20		the ordinary course of business.			
	THE CERTS OF THE				
21	ELECTRONIC MAIL:	Such document was transmitted by electronic mail to the addresses' email addresses as stated above.			
22	WAIL.	addressees email addresses as stated above.			
22					
23	I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.				
24					
24					
25	I declare under penalty of perjury that the above is true and correct. Executed on January 7, 2008, at San Diego, California.				
26	/s/Nicole C. Pino				
27	Nicole C. Pino				
-/					